

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In re:

GreenTech Automotive, Inc., et al.¹

Debtor.

)
)
) Chapter 11
) Case No. 18-10651
) Jointly Administered
)
)

**MOTION TO CONTINUE PLAN CONFIRMATION HEARING
AND CERTAIN RELATED DATES AND DEADLINES**

Debtors GreenTech Automotive, Inc. (“**GreenTech**”) and WM Industries Corp., f/k/a WM GreenTech Automotive Corporation (“**WMIC**” and, together with GreenTech, the “**Debtors**”), by counsel, file this motion (the “**Motion**”) to continue the hearing on confirmation of the Modified Third Amended Joint Chapter 11 Plan of Liquidation of GreenTech Automotive, Inc. and WM Industries Corp. [Docket No. 375] (the “**Plan**”) from 11:00 a.m. Eastern Standard Time (“**EST**”) on December 21, 2018, to 1:30 p.m. EST on January 16, 2019, and to continue certain related dates and deadlines and, in support thereof, respectfully state as follows:

BACKGROUND

A. The Bid Procedures Order and APA

1. On October 31, 2018, this Court entered the Order (A) Approving Bidding Procedures for the Sale of the Debtor’s Assets; (B) Authorizing an Auction (C) Approving

¹ The Debtors in these jointly administered chapter 11 cases are GreenTech Automotive, Inc. (Case No. 18-10651), WM Industries Corp. (Case No. 18-10652), Gulf Coast Funds Management, LLC (Case No. 18-10653), American Immigration Center, LLC (Case No. 18-10654), GreenTech Automotive Capital A-3 GP, LLC (Case No. 18-10655), and GreenTech Automotive Partnership A-3, L.P. (Case No. 18-10656).

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Certain Deadlines and the Form, Manner and Sufficiency of Notice; and (D) Granting Other Related Relief (the “**Bid Procedures Order**”) [Docket No. 350, as corrected by Order entered on November 1, 2018 as Docket No. 355], whereby the Court approved an Asset Purchase Agreement (the “**APA**”) between GreenTech and Shenzen Jin Hong Investment Management Co., Ltd., commonly known in China as Golden Resources (“**GR**”), as the stalking horse bid for the sale of substantially all the Debtors’ assets.

2. The APA requires GR to post a deposit in the amount of \$5 million (10% of the purchase price) into a United States bank account established for the purpose of the acquisition of the assets under an escrow arrangement. ¶1(a)(i). The APA further provides:

In the event that Purchaser is unable to post the Deposit within the thirty (30) day period, Seller and Purchaser shall work together, in good faith, to seek an extension of the thirty (30) day period for posting the Deposit, provided, however, (i) Purchaser has timely sought approval from the Regulatory Authority to post the Deposit, (ii) the delay in posting the Deposit is not Purchaser’s fault and is out of Purchaser’s control due to such Regulatory Authority, (iii) Seller’s major stakeholders consent to such extension, and (iv) the Bankruptcy Court approves such extension, if such approval is necessary and/or prudent, in Seller’s sole discretion.

Id.

3. Following entry of the Bid Procedures Order, Debtors’ counsel advised GR that it could make arrangements for counsel’s law firm to hold the deposit in escrow if GR did not wish to establish an escrow account directly with a U.S. bank. GR’s response indicated that it would set up the escrow account.

4. On or about November 23, 2018, Debtors’ counsel was informed that GR had not set up an escrow account but instead wished to have the funds held in escrow by Debtors’ counsel’s law firm. Unfortunately, because GR is a Chinese entity and the APA involves an international transaction, the law firm was unable to hold the deposit in escrow.

5. On November 25, 2018, Debtors' counsel contacted EagleBank, which holds the Debtor's DIP bank accounts, to commence the process of establishing an escrow account to hold the deposit. Again, because GR is a Chinese entity, EagleBank required, among other things, a statement of beneficial ownership, English translations of organizational/authorization documents, and proof of identification of persons representing each party with respect to the escrow account. EagleBank also conducted a thorough background check on the parties before it authorized opening the escrow account. The escrow account was opened on December 4, 2018.

6. On November 30, 2018, GR submitted its Foreign Exchange Purchase Application ("FEPA") to the Agricultural Bank of China, whereby GR requested authorization to exchange Chinese RMB for \$5 million USD for the purposes of posting the deposit. The Bid Procedures Order and the underlying motion were attached to the FEPA as evidence of the planned transaction. A copy of the FEPA, along with an English translation of the FEPA, are attached hereto as Exhibit A.

7. As of the date of filing of this Motion, the FEPA has not yet been approved by the Chinese regulatory authorities. Debtors' counsel has been advised that this process can take approximately 30 days.

B. The Plan

8. On November 19, 2018, the Debtor filed the Plan and a Disclosure Statement thereon. The Plan provides for the liquidation of the Debtors' assets under two scenarios. Under "Scenario One", the Debtors will transfer substantially all its assets to GR pursuant to the APA (or to the successful bidder, if GR is outbid at the auction). Under "Scenario Two", qualified bidders may submit bids for smaller groups of the Debtors' assets. If fewer than substantially all the Debtors' assets are sold through the auction, the Debtors shall, at their option, in consultation

with their major stakeholders, decide to sell a portion of their assets and to retain a portion of their assets.

9. The Debtors' Second Amended Motion to (I) Approve Disclosure Statement, (II) Waiving the Notice Requirements Under Local Bankruptcy Rule 3003-1, (III) Approve Forms of Ballot, (IV) Establish Voting Deadline and Procedures For Vote Tabulation, and (V) Approve Form of Notice (the "**Motion to Approve Disclosure Statement**") [Docket No. 343] was granted by order entered on November 26, 2018 [Docket No. 381] (the "**Disclosure Statement Order**"). The Disclosure Statement Order set certain related dates and deadlines in connection with the confirmation of the Plan. The hearing on Plan confirmation and certain related matters is scheduled for 11:00 a.m. EST on December 21, 2018.

RELIEF REQUESTED

10. Through this Motion, the Debtors request a continuance of the Confirmation Hearing to mid-January, to allow time for the approval of the deposit by the Chinese Regulatory Authorities. The Debtors also request a concomitant continuances of the hearings on motions filed in connection with confirmation of the Plan (as described below) and certain related deadlines.

11. The Debtors received one qualified bid (other than the bid of GR) for the purchase of the real property, plant and equipment comprising the Debtors' manufacturing facility (the "**Hard Assets Bid**"). The bidder has posted a deposit, in the amount of 10% of the bid price, with its outside counsel.

12. An auction for the sale of the Debtors' assets was scheduled for 1:30 p.m. EST on December 18, 2018; however, because the GR deposit has not yet been posted, the Debtors, in consultation with its major stakeholders, determined to postpone the auction. Indeed, under any

objective analysis, the APA, with a purchase price of \$50 million for substantially all the Debtors' assets, is a superior offer to the Hard Assets Bid. It will provide a meaningful return to unsecured creditors, while the Hard Assets Bid will not generate sufficient funds to provide a meaningful recovery to even secured creditors, let alone unsecured creditors.

13. The APA provides for the extension of the date by which GR must post the deposit if (i) GR has timely sought approval from the Chinese Regulatory Authority to post the deposit, (ii) the delay in posting the deposit is not GR's fault and is out of GR's control due to such Regulatory Authority, (iii) the Debtors' major stakeholders consent to such extension, and (iv) the Bankruptcy Court approves such extension. APA, ¶1(a)(i). The Debtors submit that conditions (i) through (iii) have been satisfied. Due to the delays in setting up the escrow account, GR was not able to file the FEPA until November 30, 2018, which was within the 30 day window provided by the APA. GR has filed all necessary paperwork with the Regulatory Authority and is now just waiting for approval. The approval process is now out of GR's control. Finally, Debtors' counsel has consulted with counsel for the Debtors' major stakeholders, and all have approved the extension of the time period to post the deposit and a relatively short continuance of the confirmation hearing.

14. Given that the Regulatory Agency generally takes 30 days to approve a FEPA, the Debtors propose that the deadline for GR to post the deposit be extended to and including January 9, 2019, and that the confirmation hearing be scheduled for 1:30 p.m. EST on January 16, 2018.

15. The Debtors also propose that certain other dates and deadlines related to plan confirmation be continued or extended, as follows: (a) the deadline to submit plan ballots for those that have not already voted shall be continued to 5:00 p.m. EST on January 10, 2019; (b)

the auction, if any, shall be rescheduled to 1:30 p.m. EST on January 11, 2019; (c) the deadline for the Debtors to file the ballot summary shall be January 11, 2019; and (d) the deadline to file objections to the Plan and/or the Plan Supplement shall be 5:00 p.m. EST on January 14, 2019.

16. In addition, the Debtors propose that the hearings on the following matters, which are now scheduled for hearing concurrently with plan confirmation, be continued to the same day and time as the Plan confirmation hearing and that objections and/or responses for these matters (other than the Motion to Dismiss) be due one week prior to such hearing: (a) Objection of GreenTech Automotive, Inc. to Claim No. 47 Filed by Jin Shen at al [Docket No. 398], (b) Motion to Estimate Claim [Docket No. 413], and (c) Motion to Dismiss Chapter 11 Cases [Docket No. 58].

17. The Debtors submit that an extension of GR's deposit deadline, a continuation of the hearing on Plan confirmation and related matters, and an extension of certain related dates and deadlines will serve to maximize the value of the Debtors' estates and thereby benefit the creditors.

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WHEREFORE, the Debtors request that this Court enter an order, substantially in the form attached hereto as Exhibit B, continuing the hearing on Plan confirmation and related matters and extending certain related dates and deadlines as stated herein, and for such other and further relief as may be just and proper.

Dated: December 18, 2018

Respectfully submitted,

/s/ Kristen E. Burgers

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2018, I caused to be served a true and correct copy of the foregoing Motion to Continue Plan Confirmation Hearing and Certain Related Dates and Deadlines by operation of the CM/ECF electronic case management system on all parties entitled to receive notice thereby.

/s/ Kristen E. Burgers
Kristen E. Burgers